

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 07-14610
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT July 2, 2008 THOMAS K. KAHN CLERK

D. C. Docket No. 06-00038-CR-1-MMP

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

AARON MASSIE,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(July 2, 2008)

Before ANDERSON, DUBINA and HULL, Circuit Judges.

PER CURIAM:

Appellant Aaron Massie appeals his 60-month sentence for conspiracy to

manufacture marijuana. Massie argues the district court clearly erred in finding he was responsible for 163 marijuana plants and therefore subject to a statutory minimum sentence.

We review determinations of drug quantities for clear error.

United States v. Rodriguez, 398 F.3d 1291, 1296 (11th Cir. 2005). A statutory minimum sentence of 5 years is required in drug offenses when the offense committed involves 100 or more marijuana plants. 21 U.S.C. § 841(b)(1)(B)(vii). In determining the quantity of drugs involved for imposition of a statutory minimum sentence, the district court is limited to consideration of the quantity reasonably foreseeable by the defendant. *United States v. O’Neal*, 362 F.3d 1310, 1316 (11th Cir. 2004), *vacated on other grounds by Sapp v. United States*, 543 U.S. 1106, 125 S. Ct. 1011, 160 L. Ed. 2d 1027 (2005), *reinstated by United States v. Sapp*, 154 Fed. Appx. 161, 162 (11th Cir. 2005). If a quantity of drugs is not seized, “the court shall approximate the quantity of the controlled substance.” U.S.S.G. § 2D1.1 comment. (n.12). Sentencing should be based on “fair, accurate, and conservative estimates of the quantity of drugs attributable to a defendant,” not speculative calculations. *See United States v. Zapata*, 139 F.3d 1355, 1359 (11th Cir. 1998).

After reviewing the record and reading the parties’ briefs, we conclude that

the district court did not clearly err in determining that Massie qualified for the statutory minimum. Authorities found 85 plants in Massie's house, and found 63 plants in Paul Myhre's house. Adding those plants with the 15 cuttings given by Massie to Alan Crossley, the district court correctly calculated that the amount of plants exceeded the 100 necessary under the statute. Accordingly, we affirm Massie's sentence.

AFFIRMED.